

# State ex rel. BH Media Group, Inc. v. Frakes (15)

## Additional Case Names

State ex rel. Lee Enterprises v. Frakes

State ex rel. Miller v. Frakes

State ex rel. BH Media Group, Inc. v. Frakes

State ex rel. Lee Enterprises v. Frakes

State ex rel. Miller v. Frakes

## Case Number

S-18-0604)

S-18-0605)

S-18-0606)

S-19-0027)

S-19-0028)

S-19-0029)

## Case Audio

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## Call Date

October 29, 2019

## Case Time

9:00 AM

## Court Number

Lancaster

## Case Location

Lincoln

## Court Type

District Court

## Case Summary

S-18-0604, S-18-0605, S-18-0606, S-19-0027, S-19-0028, S-19-0029 State of Nebraska ex re. BH Media Group, Inc., d/b/a Omaha World Herald (Appellee) v. State of Nebraska ex rel. Lee Enterprises, Inc. d/b/a Lincoln Journal Star (Appellee) v. State of Nebraska ex rel. Amy A. Miller and ACLU of Nebraska Foundation (Appellees) v. Scott R. Frakes, in his official capacity as the Director of the Nebraska Department of Correctional Services

Lancaster County District Court, Judge Jodi L. Nelson

Attorneys: Douglas J. Peterson, Ryan S. Post (Office of the Attorney General, for Appellant); Shawn D. Renner (Cline Williams Wright Johnson & Oldfather, LLP, for Appellee)

Civil: Nebraska Public Records Statutes

Proceedings below: After a bench trial held on May 14, 2018, the trial court found that Appellees are citizens of the state or other persons interested in the examination of the public records; the documents requested are public records as defined by Neb. Rev. Stat. § 84-712.01; and that Appellees had been denied access to the requested public records.

The district court held that the purchase orders and chemical analysis reports are exempt from disclosure under the Act. Regarding the other five categories of records, the district court said:

?As to those documents respondent argues are, or contain, information reasonably calculated to lead to the identity of [execution team] members, the court finds respondent has not met the burden to show by clear and convincing evidence that they are exempt. The evidence is speculative at best that disclosure of these documents would be reasonably calculated to lead to such identification. These documents include: documents and records showing communications with supplier(s), DEA records, invoices, inventory logs, and photographs of packaging.?

The trial court also found that respondent had not met the burden of proof to show that the photographs constitute attorney work product. Based on these findings, the district court ordered the following disposition:

?For the above and foregoing reasons, the court finds that the relator?s request for a writ of mandamus as to documents and records showing communications with supplier(s), DEA records, invoices, inventory logs, and photographs of packaging should be, and hereby is, sustained. These documents are to be disclosed within seven (7) days of this order. The court further finds that the relator?s request for a writ of mandamus as to the purchase orders and chemical analysis reports withheld should be, and hereby is, overruled.?

Issues: Whether the trial court erred by 1) partially granting the writs of mandamus requested by Appellees; 2) concluding Appellees had established standing and jurisdiction; 3) concluding Appellees met their burden to show the documents sought are public records; 4) concluding Neb. Rev. Stat. 83-967(2) is an exemption to disclosure that the public body must prove by clear and convincing evidence; 5) concluding documents that do not identify an execution team member on their face are not exempt from disclosure under the Nebraska Public Records Statutes; 6) concluding documents that do not identify an execution team member on their face are not reasonably calculated to lead to the identity of an execution team member; 7) concluding Appellant did not show by clear and convincing evidence that documents that do not identify an execution team member on their face are reasonably calculated to lead to the identity of an execution team member, to the extent Appellant was even required to do so; and 8) concluding a series of questions posed by JoAnne Young constituted a public records request.

**Schedule Code**

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